

APPROVED	CHAPTER
JUN 24 '03	494
BY GOVERNOR	PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THREE

S.P. 590 - L.D. 1634

An Act To Improve the Maine Rx Program

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA c. 603, sub-c. 1 is amended by repealing the subchapter headnote and enacting the following in its place:

SUBCHAPTER 1

MAINE RX PLUS PROGRAM

Sec. 2. 22 MRSA §2681, as amended by PL 2001, c. 358, Pt. Q, §6 and c. 405, §2 and affected by §3, is further amended by repealing the section headnote and enacting the following in its place:

§2681. Maine Rx Plus Program established

Sec. 3. 22 MRSA §2681, first ¶, as enacted by PL 1999, c. 786, Pt. A, §3, is amended to read:

The Maine Rx Plus Program, referred to in this subchapter as the "program," is established to reduce prescription drug prices and to improve the quality of health care for residents of the State. The program is designed for the State to administer by the department and must utilize manufacturer rebates and pharmacy discounts to reduce prescription drug prices. In implementing the program, the State shall serve as a pharmacy benefit manager in establishing rebates and discounts on behalf of qualified residents.

Sec. 4. 22 MRSA §2681, sub-§§1, 2, 4, 5 and 6, as enacted by PL 1999, c. 786, Pt. A, §3, are amended to read:

1. **Program goals.** The Legislature finds that affordability is critical in providing access to prescription drugs for Maine residents. This subchapter is enacted by the Legislature to enable the State to ~~act as a pharmacy benefit manager in order to~~ take steps to make prescription drugs more affordable for qualified Maine residents, thereby increasing the overall health of Maine residents, promoting healthy communities and protecting the public health and welfare, and to integrate the program as part of any statewide program for the uninsured. It is not the intention of the State to discourage employers from offering or paying for prescription drug benefits for their employees or to replace employer-sponsored prescription drug benefit plans that provide benefits comparable to those made available to qualified Maine residents under this subchapter.

2. **Definitions.** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Average wholesale price" means the wholesale price charged on a specific commodity that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file.

A-1. "Covered drugs" means drugs that are on the MaineCare preferred drug list established and revised from time to time by the department pursuant to its authority to operate the MaineCare program.

B. "Initial discounted price" ~~for a drug means a price that is less than or equal to the average wholesale price, minus 6%, plus the dispensing fee provided under the Medicaid program under this Title~~ the price the department pays MaineCare participating retail pharmacies for that drug for MaineCare members.

C. "Labeler" means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal Food and Drug Administration under 21 Code of Federal Regulations, 207.20 (1999).

D. "Participating retail pharmacy" or "retail pharmacy" means a retail pharmacy located in this State, or another business licensed to dispense prescription drugs in this

State, that participates in the program and ~~that provides discounted prices to residents as provided in subsection 5.~~

~~E. -- "Pharmacy benefit manager" means an entity that procures prescription drugs at a negotiated rate under a contract.~~

F. "Qualified resident" means a resident of the State who ~~has obtained from the department a Maine Rx enrollment card~~ a family income equal to or less than 350% of the federal poverty level and who is enrolled in the program. "Qualified resident" also means a resident of the State whose family incurs unreimbursed expenses for prescription drugs that equal 5% or more of family income or whose total unreimbursed medical expenses equal 15% or more of family income. For purposes of this paragraph, the cost of drugs provided under this subchapter is considered an expense incurred by the family for eligibility determination purposes.

G. "Secondary discounted price" means ~~a price that is equal to or less than the initial discounted price minus the amount of any rebate paid by the State to the participating retail pharmacy~~ the initial discounted price minus any further discounts paid for out of the fund.

4. **Rebate amount.** The commissioner shall negotiate the amount of the rebate required from a manufacturer or labeler in accordance with this subsection.

A. The commissioner shall take into consideration the rebate calculated under the Medicaid Rebate Program pursuant to 42 United States Code, Section 1396r-8, the average wholesale price of prescription drugs and any other information on prescription drug prices and price discounts.

B. The commissioner shall use the commissioner's best efforts to obtain an initial rebate amount equal to or greater than the rebate calculated under the Medicaid MaineCare program pursuant to 42 United States Code, Section 1396r-8.

C. With respect to the rebate taking effect no later than October 1, ~~2001~~ 2004, the commissioner shall use the commissioner's best efforts to obtain an amount equal to or greater than the amount of any discount, rebate or price reduction for prescription drugs provided to the Federal Government.

5. **Discounted prices for qualified residents.** Any ~~Each~~ participating retail pharmacy ~~that sells prescription drugs~~

~~covered by a rebate agreement pursuant to subsection 2 shall discount the retail price of those drugs sold to qualified residents shall sell covered drugs to qualified residents at the lower of the initial discounted price and the secondary discounted price as such prices are determined by the department pursuant to this subchapter.~~

A. The department shall establish discounted prices for drugs covered by a rebate agreement and shall promote the use of efficacious and reduced-cost drugs, taking into consideration reduced prices for state and federally capped drug programs, differential dispensing fees, administrative overhead and incentive payments.

B. Beginning January 1, 2001 2004, a participating retail pharmacy shall offer the initial discounted price.

C. No later than October 1, 2001 2004, a participating retail pharmacy shall offer the secondary discounted price if available.

~~D. In determining the amount of discounted prices, the department shall consider an average of all rebates provided pursuant to subsection 4, weighted by sales of drugs subject to these rebates over the most recent 12-month period for which the information is available.~~

6. Operation of program. The requirements of this subsection apply to participating retail pharmacies.

A. The Maine Board of Pharmacy shall adopt rules requiring disclosure by participating retail pharmacies to qualified residents of the amount of savings provided as a result of the program. The rules must consider and protect information that is proprietary in nature. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter ~~II-A~~ 2-A.

B. The department may not impose transaction charges under this program on retail pharmacies that submit claims or receive payments under the program.

C. A participating retail pharmacy shall submit claims to the department to verify the amount charged to qualified residents under subsection 5.

D. On a weekly or biweekly basis, the department must reimburse a participating retail pharmacy for the difference between the initial discounted price and the secondary discounted price ~~prices~~ provided to qualified residents

~~under subsection 5 and professional fees, which must be set by the commissioner. The amount of the initial professional fee must be set at \$2 per prescription.~~

~~E. The department shall collect utilization data from the participating retail pharmacies submitting claims necessary to calculate the amount of the rebate from the manufacturer or labeler. The department shall protect the confidentiality of all information subject to confidentiality protection under state or federal law, rule or regulation.~~

F. The department shall conduct ongoing quality assurance activities similar to those used in the MaineCare program.

Sec. 5. 22 MRSA §2681, sub-§7. as enacted by PL 1999, c. 786, Pt. A, §3 and amended by PL 2001, c. 405, §2 and affected by §3, is repealed and the following enacted in its place:

7. Action with regard to nonparticipating manufacturers and labelers. The names of manufacturers and labelers who do not enter into rebate agreements pursuant to this subchapter are public information. The department shall release this information to health care providers and the public. The department shall impose prior authorization requirements in the MaineCare program, as permitted by law, to the extent the department determines it is appropriate to do so in order to encourage manufacturer and labeler participation in the program and so long as the additional prior authorization requirements remain consistent with the goals of the MaineCare program and the requirements of the federal Social Security Act, Title 19.

This subsection is repealed when subsection 7-A takes effect.

Sec. 6. 22 MRSA §2681, sub-§7-A is enacted to read:

7-A. Action with regard to nonparticipating manufacturers and labelers. The names of manufacturers and labelers who do and do not enter into rebate agreements pursuant to this subchapter are public information. The department shall release this information to health care providers and the public on a regular basis and shall publicize participation by manufacturers and labelers that is of particular benefit to the public. The department shall impose prior authorization requirements in the MaineCare program, as permitted by law, to the extent the department determines it is appropriate to do so in order to encourage manufacturer and labeler participation in the program and so long as the additional prior authorization requirements remain consistent with the goals of the MaineCare program and the requirements of the federal Social Security Act, Title 19.

This subsection takes effect on the date that the department begins offering prescription drug benefits under the program.

Sec. 7. 22 MRSA §2681, sub-§8, as enacted by PL 1999, c. 786, Pt. A, §3, is repealed.

Sec. 8. 22 MRSA §2681, sub-§9, as amended by PL 2001, c. 358, Pt. Q, §6, is amended to read:

9. **Dedicated fund.** The Maine Rx Plus Dedicated Fund, referred to in this section as the "fund," is established to receive revenue from manufacturers and labelers who pay rebates as provided in subsection 4 and any appropriations or allocations designated for the fund. The purposes of the fund are to reimburse retail pharmacies for discounted prices provided to qualified residents pursuant to subsection 5; to reimburse the department for contracted services including pharmacy claims processing fees, administrative and associated computer costs, ~~professional fees paid to participating retail pharmacies~~ and other reasonable program costs; and to benefit the elderly low-cost drug program under section 254. The fund is a nonlapsing dedicated fund. Interest on fund balances accrues to the fund. Surplus funds in the fund must be used for the benefit of the program. Notwithstanding Title 5, section 1585, surplus funds may also be transferred to the elderly low-cost drug program established under section 254.

Sec. 9. 22 MRSA §2682, as amended by PL 2001, c. 471, Pt. E, §§5 to 7 and affected by §8, is further amended by repealing the section headnote and enacting the following in its place:

§2682. Display of Maine Rx Plus Program participation information

Sec. 10. 22 MRSA §2693, sub-§1. ~~¶¶~~A and B. as enacted by PL 1999, c. 786, Pt. A, §3, are amended to read:

A. By July 1, ~~2002~~ 2005, the department shall adopt rules establishing the procedures for adoption and periodic review of maximum retail prices, the procedures for establishing maximum retail prices for new prescription drugs and for reviewing maximum retail prices of selected drugs and the procedures for phasing out or terminating maximum retail prices. Prior to adopting rules pursuant to this paragraph, the commissioner shall consult with and consider the recommendations of the commission regarding the rules.

B. By January 5, ~~2003~~ 2006, the commissioner shall determine whether the cost of prescription drugs provided to qualified residents under the Maine Rx Plus Program pursuant

to subchapter 1 is reasonably comparable to the lowest cost paid for the same drugs delivered or dispensed in the State. In making this determination the following provisions apply.

(1) The commissioner shall review prescription drug use in the ~~Medicaid~~ MaineCare program using data from the most recent 6-month period for which data is available.

(2) Using the data reviewed in subparagraph (1), the commissioner shall determine the 100 drugs for which the most units were provided and the 100 drugs for which the total cost was the highest.

(3) For each prescription drug listed in subparagraph (2), the commissioner shall determine the cost for each drug for qualified residents who are provided those drugs under the Maine Rx Plus Program on a certain date. The average cost for each such drug must be calculated.

(4) For each prescription drug listed in subparagraph (2), the commissioner shall determine the lowest cost for each drug paid by any purchaser on the date that is used for subparagraph (3) delivered or dispensed in the State, taking into consideration the federal supply schedule and prices paid by pharmaceutical benefits managers and by large purchasers and excluding drugs purchased through the Maine Rx Plus Program. The average cost for each such drug must be calculated.

(5) If the average cost for one or more prescription drugs under the Maine Rx Plus Program as determined in subparagraph (3) is not reasonably comparable to the average lowest cost for the same drug or drugs as determined in subparagraph (4), the commissioner shall establish maximum retail prices for any or all prescription drugs sold in the State. Maximum prescription drug prices established under this subparagraph must take effect July 1, 2003 2006.

Sec. 11. PL 2001, c. 405, §3 is amended to read:

Sec. 3. Effective date. This Act takes effect on the date that the Department of Human Services begins offering prescription drug benefits under the Maine Rx Plus Program as ~~defined~~ established in the Maine Revised Statutes, Title 22, section 2681.

Sec. 12. Transfer for Maine Rx Plus Program. Notwithstanding any other provision of law, the State Controller shall transfer \$800,000 in fiscal year 2003-04 and \$2,000,000 in fiscal year 2004-05 from the unappropriated surplus of the General Fund to the Maine Rx, Other Special Revenue Funds account within the Department of Human Services. These funds must be used for the implementation and operations of the Maine Rx Plus Program.